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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,991	02/19/2004	Shawn Bruce Joseph Daley	930077-2007	5336
20999	7590	07/14/2005	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			LANGDON, EVAN H	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/781,991	Applicant(s) DALEY ET AL.	
	Examiner Evan H. Langdon	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 21-25 is/are rejected.
- 7) ☒ Claim(s) 19 and 20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/19/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-25, drawn to a carpet stretcher, classified in class 254, subclass 201.
- II. Claims 26-28, drawn to a carpet stretcher including a connection member, classified in class 254, subclass 210.
- III. Claims 29-32, drawn to an apparatus for controlling a carpet stretcher, classified in class 254, subclass 200.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II, III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the carpet stretcher has use with out the connection member to vary the distance of the carpet fixing unit, and can be controlled by a controller other than one have a power level adjuster. The subcombination has separate utility such as the connection member can be used in any type of carpet stretcher, such as one without a driving unit, and the controller having a power level adjuster can adjust the power of any variable electromagnetic operated device other that a carpet stretcher.

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Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II or III, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Ronald Santucci on 08 July 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-25.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-32 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites the limitation "the electric carpet stretcher" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-8, 11, 12, 16 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Guarneri (US 5,255,894).

Guarneri discloses a carpet stretcher comprising:

an engaging head 22 comprised at a front end of the carpet stretcher that engages a carpet;

a sliding member 19 that is connected to a rear end of the engaging head to move the engaging head back and/or forth within a predetermined space;

a housing unit 1 that covers the sliding member;

a driving unit 4, 9 that drives the sliding member; and

a carpet fixing unit 2 to push and fix the carpet,

wherein, while the carpet is fixed by the engaging head 22 and the carpet fixing unit, the sliding member 19 is moved a predetermined distance by the driving unit 4, 9, and the engaging head forwards a distance that is equal to the distance by which the sliding member is moved, stretching the carpet.

In regards to claim 3, Guarneri discloses the driving member as an electric driver.

In regards to claim 4, Guarneri discloses the driving unit comprises a cylinder, a piston 9 and a control unit 29 controlling the movement of the piston.

In regards to claims 5 and 6, Guarneri discloses the piston comprises:

a first oscillating back and forth member 13 and a second member 12 in connection with the first member to move with the first member.

In regards to claim 7, Guarneri discloses the second member 12 is connected to the sliding member 19 and moves the sliding member when the first member 13 oscillates back and forth.

In regards to claim 8, the piston further comprises a third member 14 connected to the second member 12, the third member impacting and pushing the sliding member 19 when the first member 13 moves.

In regards to claims 11 and 12, Guarneri discloses the driving unit further comprises an electromagnetic coil 4 generating an electromagnetic field in the cylinder, and the control unit 29 intermittently supplies power to the electromagnetic coil to control movement of the piston (col. 3, lines 1-8), where the controller supplies power to the electromagnetic coil and the power is supplied from an external source the switching unit that intermittently supplies the electromagnetic coil with the power produced.

In regards to claim 16, Guarneri discloses the engaging head comprises protrusions that are used to engage the carpet.

In regards to claim 21, Guarneri discloses a spring 15 that provides a restoration force to the sliding member 19 in relation to the piston.

In regards to claim 22, Guarneri discloses a spring 15 that provides a restoration force to the third member 14.

In regards to claim 23, Guarneri discloses a handle 3.

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In regards to claim 24, Guarneri discloses a band 3.

Claims 1-2, 4-8, 10, 16, 17, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Gauthier et al. (US 6,371,446).

Gauthier discloses a carpet stretcher comprising:

an engaging head 20 comprised at a front end of the carpet stretcher that engages a carpet;

a sliding member 26 that is connected to a rear end of the engaging head to move the engaging head back and/or forth within a predetermined space;

a housing unit 12 that covers the sliding member;

a driving unit 28 that drives the sliding member; and

a carpet fixing unit 6 to push and fix the carpet,

wherein, while the carpet is fixed by the engaging head 20 and the carpet fixing unit, the sliding member 26 is moved a predetermined distance by the driving unit 18, and the engaging head forwards a distance that is equal to the distance by which the sliding member is moved, stretching the carpet.

In regards to claim 2, Gauthier discloses the driving member as a pneumatic driver.

In regards to claim 4, Gauthier discloses the driving unit comprises a cylinder 24, a piston 10 and a control unit (Fig. 3 and 4) controlling the movement of the piston.

In regards to claims 5 and 6, Gauthier discloses the piston comprises:

a first oscillating back and forth member 8 and a second member 10 in connection with the first member to move with the first member.

In regards to claim 7, Gauthier discloses the second member 10 is connected to the sliding member 26 and moves the sliding member when the first member 8 oscillates back and forth.

In regards to claim 10, Gauthier discloses an air compressor, an air direction control valve (Fig. 3 and 4) and a trigger switch 34.

In regards to claim 16, Gauthier discloses the engaging head comprises protrusions that are used to engage the carpet.

In regards to claim 17, Gauthier discloses the engaging head comprises engaging pins 32 and an adjuster 132.

In regards to claim 23, Gauthier discloses a handle 94.

In regards to claim 24, Gauthier discloses a band 94.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guarneri.

Gauthier discloses the claimed invention except for the buffering member 19 located on the third member 14. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the buffering member 19 on the third member 14, since it

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has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

In regards to claim 13-15, Guarneri discloses a switch 29 that is manipulated by a user, but fails to show a time controller comprising a power lever adjuster with a power divider.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the control unit of Guarneri to include a time controller comprising a power lever adjuster with a power divider since it would require only routine skill in the art to provide a voltage divider to vary that amount of electric power supplied to any device powered by electricity.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guarneri in view of Foley (US 5,681,031).

Foley teaches a carpet stretcher comprising a connection member 10 to vary the distance between a driving unit 24, 32, 42 and a carpet fixing unit 14.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the carpet fixing unit of Guarneri to include a connection member as suggested by Foley, to adjust the location and applicability of the carpet stretcher.

Allowable Subject Matter

Claim 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evan H. Langdon whose telephone number is (571)272-6948.

The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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